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argument

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 HAVERHILL RETIREMENT SYSTEM,  
4 *et al.*,

Plaintiffs,

5 v.

13 CV 7789 (LGS)

13 CV 7953 (LGS)

13 CV 9080 (LGS)

13 CV 9125 (LGS)

13 CV 9237 (LGS)

14 CV 350 (LGS)

14 CV 475 (LGS)

14 CV 494 (LGS)

14 CV 752 (LGS)

14 CV 787 (LGS)

14 CV 825 (LGS)

14 CV 867 (LGS)

12 BARCLAYS BANK PLC, *et al.*,

13 Defendants.

14 -----x

15 February 13, 2014

11:20 a.m.

16 Before:

17 HON. LORNA G. SCHOFIELD,

18 District Judge

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1 (Case called)

2 THE COURT: Good morning, counsel.

3 ALL COUNSEL: Good morning, your Honor.

4 THE COURT: Thank you for coming out in the snow. My  
5 apologies. And, just by way of explanation, the court house  
6 was closed yesterday so there was really no way for me to get  
7 anything onto the docket any later than close of business on  
8 Tuesday which is why you saw the order that if the court house  
9 was open, we would be here. And I realize that if I had  
10 scheduled the conference for 10:50 we would not be here. But,  
11 in any event, I very much appreciate your coming and I also  
12 realize it is a real testament to those of you who want to be  
13 interim lead counsel of your commitment to be here and serve  
14 the class. So, thank you for that.

15 Let me tell you what I hope to accomplish today.  
16 First, I want to talk just a little bit about what cases remain  
17 in the cue and if you know whether there are additional  
18 defendants that are contemplated. Then I would like to talk  
19 about a few housekeeping matters. Then we will turn to  
20 appointment of interim lead counsel to represent the putative  
21 U.S. class. I will attempt to rule on that today, that's my  
22 intention. We will also discuss whether or not we need  
23 appointment of interim lead counsel to represent the putative  
24 Korean class. Then we will talk a little bit about the March  
25 3rd conference, the agenda, whether we really should have it on

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1 March 3rd, and then some more miscellaneous and housekeeping  
2 matters. Obviously, if there is anything that counsel want to  
3 raise that's not on my agenda there will be ample opportunity  
4 to do that.

5 So, the first issue is that we have many cases here,  
6 some that have been assigned to me officially, a couple that  
7 are in the cue to be assigned to me officially, and a couple  
8 without docket numbers. I understand that there is a  
9 Philadelphia case that Quinn plans to file. Has that been  
10 filed?

11 MR. BROCKETT: Yes. It was filed on Monday, your  
12 Honor, afternoon.

13 THE COURT: But it doesn't have a docket number on  
14 ECF.

15 MR. BROCKETT: I think that is the case. Actually, I  
16 believe on Tuesday it was filed.

17 MR. OLSON: Judge, Steig Olson from Quinn Emanuel.  
18 Actually, we did receive a docket number, I don't  
19 think it is on ECF yet but it is 14 civil 876.

20 THE COURT: Okay. There is one housekeeping matter I  
21 should mention. I think just in the interest of time we are  
22 not going to call the roll of every attorney who is here. My  
23 deputy has taken your appearances. If he has not taken your  
24 appearance, in other words if you have come in and haven't told  
25 either Mr. Lewis or my deputy that you are here, please be sure

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1 and see him after the proceedings so that it is on the record  
2 that you have appeared. But, I'm not going to call names.

3 So, there is another case called Fresno that I think  
4 was referenced by the Berman DeValerio firm. We have  
5 Mr. Tabacco on the phone. I had given him permission, since  
6 his flight was cancelled, to appear telephonically.  
7 Mr. Tabacco, can you give us an update on that case?

8 MR. TABACCO: Good morning, your Honor, and thank you  
9 very much. I am working on getting a new travel agent at the  
10 same time.

11 Your Honor, our case was filed on Tuesday morning and  
12 the civil number is 14 civil 09021. So, that is on file.

13 THE COURT: Okay. Thank you very much.

14 So now this is a question to all plaintiff's counsel:  
15 Are there any additional filings or defendants who are  
16 contemplated who are not yet appearing on the docket apart from  
17 what we have discussed? Mr. Coughlin?

18 So, the acoustics are terrible in this room and I  
19 apologize for that. The way to be here is to stand, put the  
20 mic at the very edge of the desk, point it straight up and  
21 everyone will hear you.

22 And you don't even need to bend over.

23 MR. COUGHLIN: Good morning, your Honor. Patrick  
24 Coughlin from Robbins Geller.

25 THE COURT: Good morning, Mr. Coughlin.



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1 MR. COUGHLIN: A number of state funds have contacted  
2 us so there may be additional filings from at least two state  
3 funds -- pension funds.

4 THE COURT: Thank you.

5 Anyone else? Yes, Mr. Asciolla?

6 MR. ASCIOLLA: Good morning, your Honor.

7 we are aware of counsel filing another case, it should  
8 be this week. I don't think they're here in the courtroom but  
9 I am aware that at least one other case will be filed as well.

10 THE COURT: One other case and one other additional  
11 plaintiff's firm?

12 MR. ASCIOLLA: I don't know if any other plaintiff's  
13 firms will be on that complaint but one firm called us and said  
14 they would be filing.

15 THE COURT: Okay, a firm that is not here.

16 MR. ASCIOLLA: A firm that is not here, correct.

17 THE COURT: So, the next question I have is I have not  
18 read all of the complaints, I confess, but I have read at least  
19 a couple of them and have a general idea of what the case is  
20 about. We are obviously very far from the merits in this case  
21 but one of the things that I think is relevant is to talk a  
22 little bit about what discovery is contemplated and what kind  
23 of discovery and where it will occur. I notice that Scott &  
24 Scott filed the first case. I don't think I need to hear from  
25 all of you to answer the questions so I will ask Mr. Burke if

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1 you can tell me a little bit about what discovery is likely to  
2 occur and where.

3 MR. BURKE: Certainly.

4 Your Honor, you are no doubt aware there have been a  
5 number of governmental investigations and we would think that  
6 would be the starting point for discovery asking the defendants  
7 to turn over to the plaintiffs what they have already produced  
8 to law enforcement or other investigatory agencies. This is a  
9 cartel case, however, it is a worldwide market so there are  
10 going to be witnesses and documents in Europe as well as the  
11 United States, London being the largest center for foreign  
12 exchange. So, we are going to have at least a two-continent  
13 discovery process. We are going to be looking for the e-mails,  
14 the instant messages, the communications between various  
15 members of what has been variously called *The Dream Team*, *The*  
16 *Cartel*, *The Bandits Club*, *One Team One Dream*, different  
17 colorful names, so prosecuting it like you would prosecute a  
18 cartel case so you are going to focus on communications.

19 THE COURT: Okay.

20 MR. BURKE: The last thing, obviously, is going to be  
21 trading patterns because everybody is focused in on what is  
22 known as the 4:00 p.m. fix, the London fix. 4:00 p.m. London  
23 time when trading patterns seem to take some very interesting  
24 turns.

25 THE COURT: Okay. Thank you very much.

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1           So, let me ask Mr. Brockett about depositions. I know  
2 we are a long way from depositions in this case but what kind  
3 of people do you think will be deposed in this case and where?

4           MR. BROCKETT: Well, your Honor, there is going to be  
5 depositions, obviously, of the plaintiffs, their trading.  
6 There is going to be depositions of their trading strategies  
7 and things of that kind that we would expect to have to  
8 produce, certainly one or maybe more depositions of the named  
9 plaintiffs in order to elicit relevant information. I would  
10 then expect that there would be significant depositions of all  
11 of the banks that are named as defendant including several of  
12 the senior traders about Forex.

13           Now, I should also add many of the traders who were  
14 running the banks during the events in question have been fired  
15 or discharged or relieved and so we are going to have to deal  
16 with how we are going to secure their attendance at trial.

17           But, there is going to be significant depositions of  
18 the banks and likely to be significant depositions of  
19 third-parties as well.

20           THE COURT: And where are all of these people?

21           MR. BROCKETT: Well, the U.S. banks are obviously in  
22 New York. Some of the foreign banks will have New York  
23 branches out of which some of the trading operations would have  
24 been conducted but it is likely true that a number of critical  
25 witnesses will be in London or in other countries in Europe.

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1 THE COURT: Okay. Thanks very much.

2 So, this is a question for Mr. Briganti and I'm just  
3 calling you at random because I need the answer from one of the  
4 plaintiff's lawyers. So, I apologize for putting you each on  
5 the spot.

6 This question has to do with the class representative.  
7 Obviously we have many, many, many plaintiffs here and I  
8 consequently have never been involved in a case with quite so  
9 many plaintiffs that was a class action at least at the outset.  
10 Based on your experience, how do you at least envision the  
11 evolution of who the representative plaintiff would be.

12 MR. BRIGANTI: It is an excellent question, your  
13 Honor, and you can just tell by reading the complaints that  
14 have been filed that each group of lawyers had a slightly  
15 different view of who should serve as a class representative in  
16 the case and that's typical, Judge, when you deal with a  
17 financial benchmark case like this because a manipulation of  
18 that financial benchmark impacts trillions of dollars and  
19 financial instruments and a wide variety of instruments, your  
20 Honor.

21 So, some of the instruments in our complaint details  
22 what we believe to be the most important instruments which  
23 would be impacted by a manipulation of the WM/Reuters and it is  
24 the London fix, your Honor, the 4:00 p.m. fix that is used to  
25 settle trillions of dollars.

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1           It would be F. Ex. swap contracts, your Honor, where  
2   you are swapping one currency for the other where the price  
3   term in the contracts is you have to look at WM/Reuters in  
4   order to settle that trade. There is also exchange traded  
5   funds, your Honor, that have exposure to foreign securities and  
6   the portfolio managers have the very difficult task of  
7   understanding how to value those transactions, those baskets of  
8   securities.

9           THE COURT: So, I will interrupt you and ask if you  
10   can just answer my question which is do you anticipate that the  
11   class representatives would be most or all of the plaintiffs  
12   who are currently appearing on the various dockets sheets? Or  
13   do you think that it might more likely be one or two or three?

14          MR. BRIGANTI: I think it can be all of the above,  
15   your Honor, because there is going to be some pension funds who  
16   may have only traded an ETF that has exposure to F. Ex. by  
17   reason of the fact that F. Ex. had to be used to settle the  
18   trade. There could be different classes of plaintiffs that  
19   transacted directly with the defendant and those are going to  
20   be different types of contracts as well. But, all of them have  
21   the singular commonality, if you will, that they are all priced  
22   or valued to what happened at the WM fix at 4:00 p.m.

23          THE COURT: Does anyone else want to address the  
24   question of possible subclasses? I am going to restrict my  
25   question to people who are at the tables here.

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1 Do you see the likelihood of subclasses or no?

2 MR. COUGHLIN: Your Honor, Patrick Coughlin.

3 I don't think at this time that we see that. I think  
4 that right now we are trying to look at it as one class and it  
5 may affect a lot of different securities or options but we  
6 don't contemplate subclasses necessary at this time.

7 THE COURT: Okay. Thank you very much.

8 Okay. So, I at least have some sense of what we are  
9 planning for in terms of discovery and that does inform my  
10 decision a little bit about the appointment of lead counsel.  
11 Let me do a little bit of housekeeping first.

12 First, there are several pro hac vice motions that are  
13 pending. They will all be granted. Some of them have not been  
14 docketed yet.

15 In addition, I should mention that even though I do  
16 not have a conflict like some of my predecessor judges in the  
17 case, there are a few things I just want people to know about,  
18 first of all, Ms. Liebenberg who has entered an appearance from  
19 Fine & Kaplan is a friend of mine. We have known each other  
20 for many years from the ABA but I see that she is not seeking  
21 to appear or have her firm appointed as interim lead counsel so  
22 I don't believe that creates any kind of conflict.

23 Second, Cleary Gottlieb, is there anyone here from  
24 Cleary Gottlieb? Mr. Moloney, good morning.

25 MR. MOLONEY: Good morning.

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1 THE COURT: Mr. Maloney and I once shared a secretary  
2 in 1980 -- I don't know, a long time ago. Clearly Gottlieb is  
3 where I worked at my first legal job, that was about 30 years  
4 ago. I don't think that creates a conflict, but good morning.  
5 Nice to see you here.

6 MR. MOLONEY: And you, your Honor. Nice to see you.

7 THE COURT: More recently -- and I'm talking six years  
8 ago -- JP Morgan Chase was a client of the firm that I worked  
9 with on a matter that I worked on. The matter was completely  
10 unrelated to this matter, it was staffed with many lawyers  
11 including three partners. I was a partner but I was not the  
12 primary client contact and I was not the lead partner on the  
13 matter. I worked on it for about three to four months full-time  
14 and then that was the end of my association with the client. I  
15 have had no connection with the client or anyone from the  
16 client thereafter. I did not then have nor do I have now any  
17 personal relationships with anyone there.

18 As I said, I don't think any of these are grounds  
19 under the ethical rules for recusal but I just wanted to make  
20 sure that everybody was aware of that.

21 So, what I would like to do now is turn to appointment  
22 of interim lead counsel to represent the U.S. putative class  
23 and this, of course, is all premised on the assumption that  
24 everyone here would like to have all of the cases consolidated  
25 that have a U.S. class. That was implicit in every letter I

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1 received. I did not see anybody suggesting otherwise and so  
2 I'm going to proceed on that assumption unless someone tells me  
3 right now that they object.

4 Okay. Seeing no objection, I will go on that  
5 assumption.

6 I received several letters from the various  
7 plaintiffs' firms proposing that they serve either alone or  
8 with other firms as interim lead counsel for the U.S. class.  
9 Some of those requests, it appears, have been superseded by  
10 later requests, and so what I believe I am left with is a  
11 proposal with four separate proposals. I will tell you what I  
12 think they are, you correct me if I am wrong. One is a  
13 proposal from Lowey Dannenberg, Mr. Briganti's firm, in a  
14 letter dated January 24th and February 10th.

15 There is also the most recent letter from the Quinn  
16 firm proposing for lead counsel Quinn, Labaton, Robbins Geller  
17 and Cohen Milstein, and that appears in a letter dated February  
18 10th and in the letter it is noted that that is supported by  
19 various other of plaintiff's counsel or plaintiffs here.

20 There is a third request from the Berman DeValerio  
21 firm -- Mr. Tabacco's firm -- who is on the phone dated  
22 February 10th.

23 And then there is a fourth request from Scott & Scott,  
24 Mr. Burke's firm, with the Hausfeld firm.

25 Do we have a representative from Hausfeld?



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1 THE COURT: Mr. Hausfeld?

2 MR. HAUSFELD: Yes, your Honor.

3 THE COURT: Good morning.

4 MR. HAUSFELD: Good morning.

5 THE COURT: That is our fourth request and that is  
6 also in a letter dated February 10th.

7 So, those are the four requests that I am considering.  
8 Is there anything else that should be on that list that I am  
9 not aware of? Okay. So, it looks like that is the complete  
10 list. I am looking to Federal Rule of Civil Procedure 23(g)(3)  
11 which says that the Court may designate interim counsel to act  
12 on behalf of a putative class and I note that the Manual for  
13 Complex Litigation says it might be especially useful where  
14 there are a number of overlapping duplicative or competing  
15 suits that can be consolidated. That certainly seems to be the  
16 case here and I do think it would be helpful to have interim  
17 lead counsel. And that is apparently the view of virtually all  
18 of the plaintiff's firms here as well.

19 So, the factors that I am considering are the ones  
20 that aren't necessarily applicable because they deal with  
21 appointment of counsel after certification but those are  
22 factors in Rule 23(g)(1), the work that counsel has done  
23 investigating the potential claims but I will say that I, like  
24 some judges, don't put too much weight on that because we are  
25 very, very early in the case, there is much more work to be

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1 done and I'm sure that any very good lead counsel that is best  
2 suited to serve the interests of the class will do a job of  
3 investigating potential claims. So, I put some weight but not  
4 a great deal of weight on that.

5 Also very important are counsel's experience in class  
6 actions and complex antitrust cases, knowledge of the  
7 applicable law and resources. And with regard to that I am  
8 interested in the size of the firm, how many offices there are,  
9 also what other possibilities or resources you have available  
10 to you that are not necessarily evident from looking at your  
11 firm roster.

12 I also will be asking some of you about your own  
13 personal commitments because I certainly know from practice  
14 that even in a very large firm the senior partner has only so  
15 much time and energy to go around and that's a matter of  
16 interest and concern to me.

17 The fifth issue, if I ask you to speak I would like  
18 you to address it, is the absence of issue conflicts or client  
19 conflicts.

20 I don't need anybody to repeat what is in your  
21 submissions, I have read your submissions. I have looked at  
22 your firm websites. I have looked at Martindale and I have  
23 looked at some of the cases that are referenced in your  
24 submissions where you have acted as lead counsel or where you  
25 are participating. I have looked at both docket sheets and

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1 also some of the papers in those cases. So, I feel like I have  
2 a very complicated chart to consult and also a lot of  
3 information.

4 And so, what I'm going to do is I am going to pose  
5 questions. I think the way I will handle this is I will pose  
6 questions to the Quinn firm to address the group and then I  
7 will ask questions of the Lowey firm, the Berman DeValerio firm  
8 and Scott & Scott. I think none of us wants to be here all day  
9 so, please, think about efficiency as you are speaking. But,  
10 let me speak to Mr. Brockett first.

11 Quinn is obviously a different sort of firm than the  
12 usual plaintiff's firm and different from the other firms, even  
13 the largest of the other firms that are here. You tend to sit  
14 on both sides of the table, you have over 600 lawyers, you have  
15 vast resources. On the other hand, having been at a big firm  
16 myself I know that all of the resources of the firm are not  
17 always available at all times for all matters. So, what I  
18 would like to hear from you is I know your firm is unique in  
19 those respects. What makes you and your firm most suitable for  
20 the representation of the class in this case? Let me ask that  
21 one first.

22 MR. BROCKETT: Your Honor, would the Court mind if I  
23 spoke from the podium?

24 THE COURT: If you speak into the mic at the podium  
25 that would be fine.

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1 MR. BROCKETT: Thank you, your Honor.

2 Quinn Emmanuel, as I believe the Court knows, is the  
3 largest firm in the world devoted solely to this litigation.  
4 We are not strictly a plaintiff's antitrust firm. We come into  
5 these cases for the plaintiffs when we think there is something  
6 unique that we can offer. We don't do a volume of the cases.  
7 When we take in a case we devote all the resources that are  
8 necessary to prosecute that case. In this case we decided to  
9 jump in because clients like the City of Philadelphia and other  
10 clients ask us to but also because this case is, frankly, right  
11 within our sweet spot because it combined our leading bank  
12 litigation practice with our antitrust and our class action  
13 practices, all of which are widely recognized as among the  
14 nation's best not only among plaintiffs firms but among all  
15 firms.

16 We have substantial expertise in the issues that are  
17 likely to arise here as this case involves the intersection of  
18 the antitrust laws, the financial industry and our class action  
19 practice as well. And we have the leading appellate practice  
20 in the Second Circuit and appellate issues could be important  
21 here.

22 THE COURT: Let me just interrupt.

23 I understand that if you consider all of the  
24 attributes of the firm as a whole it is very hard for any other  
25 firm, especially the ones who are here, to compete with that

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1 but one of the things I am most interested in are what,  
2 precisely, would be devoted as resources to the case? So, for  
3 example, would you be working on it as the lead partner?

4 MR. BROCKETT: Absolutely. Yes.

5 THE COURT: And how many other partners, if any, do  
6 you think would be assigned to work on the case as primary  
7 people on the case?

8 MR. BROCKETT: Many. And I can give you as a  
9 benchmark, your Honor, we have sued all of the same banks who  
10 are defendants here for the FHFA. In that case, for example,  
11 we have 70 to 80 lawyers that are working on the case.

12 THE COURT: How many partners?

13 MR. BROCKETT: Ms. Sheth who is here and worked on the  
14 case can perhaps answer that question more specifically.

15 MS. SHETH: Sure. Manisha Sheth on behalf of Quinn  
16 Emmanuel.

17 THE COURT: Now, we need a mic.

18 MS. SHETH: It is roughly about 18 to 20 partners.

19 THE COURT: Who of those partners spend the most time  
20 on the case?

21 MR. BROCKETT: On the FHFA case?

22 THE COURT: I don't need their names but three senior  
23 partners, five senior partners? Who spends most of their time  
24 on the case?

25 MS. SHETH: Out of that group I would say

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1 approximately 75 percent of those partners spend over between  
2 60 and 70 percent of their time on those cases. There are  
3 multiple cases, the vast majority of them are before Judge Cote  
4 but we also have one pending in the Federal District Court in  
5 California before Judge Pfaelzer, we have three partners on  
6 that case. We also have a case pending in the District of  
7 Connecticut before Judge Thompson and we have, I believe, three  
8 partners on that case.

9 THE COURT: Okay.

10 MS. SHETH: So, a substantial amount of our time.

11 THE COURT: Are they the same partners who would be  
12 the primary partners on this case if Quinn Emanuel were  
13 appointed?

14 MR. BROCKETT: The primary partners on this case, if  
15 we were appointed, would be the three partners who are in the  
16 courtroom: Myself, Daniel Brockett, Manisha Sheth and Steig  
17 Olson who is next to here. And I might just mention that Steig  
18 was recently noted as one of the rising stars under 40 in the  
19 class action antitrust bar.

20 THE COURT: Okay.

21 MR. BROCKETT: Among others.

22 THE COURT: Are the three of you also on this other  
23 matter with the 18 to 20 partners where 75 percent of them  
24 spend half their time on that matter?

25 MR. BROCKETT: Neither myself nor Mr. Olson works on

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1 FHFA. Ms. Sheth does work on that case. Although, I would  
2 comment quite a number of those cases have been settling which  
3 has been freeing up the time of a lot of partners who are  
4 devoted to that case.

5 THE COURT: I don't need names, but how many other  
6 substantial cases do you have substantial responsibility for?

7 MR. BROCKETT: The CDS antitrust case before Judge  
8 Cote.

9 THE COURT: No, I mean in general, your roster of  
10 cases, what you face every week or however it is you count.  
11 How many substantial cases do you count among your cases?

12 MR. BROCKETT: I have a docket of mortgage-backed  
13 securities cases that I handle for Allstate and for Prudential.  
14 Those cases are in various stages of discovery; some of them  
15 are in motion to dismiss stages still. Those cases have been  
16 settling at a rapid clip and I can tell the Court on the  
17 details but there is lots of ongoing discussions about those.  
18 I think, as the Court knows, many of the banks now are settling  
19 the RMBS litigation.

20 So, I have the mortgage-backed securities cases, I  
21 have some LIBOR cases that right now are in a holding pattern  
22 because Judge Buchwald has put all the cases -- stayed all the  
23 non-class-action cases so those cases are in a holding pattern  
24 at this point.

25 THE COURT: And you don't have involvement with the

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1 class action cases in the latter?

2 MR. BROCKETT: No involvement in the LIBOR class  
3 action, only in the individual investor cases.

4 THE COURT: Okay.

5 MR. BROCKETT: And then the CDS case with Judge Cote  
6 which is, we will have a motion to dismiss teed up by the  
7 summertime.

8 THE COURT: Okay. I'm sorry, what was your name, sir?

9 MR. OLSON: Good morning, your Honor. Steig Olson.

10 THE COURT: Mr. Olson?

11 MR. OLSON: Yes.

12 THE COURT: Good morning.

13 Mr. Olson, what do you count among your major cases?

14 MR. OLSON: My major cases are this case and the CDS,  
15 the credit default swap antitrust which Mr. Brockett and I lead  
16 for Quinn Emanuel.

17 THE COURT: Are those the RMBS cases?

18 MR. OLSON: No. It is an antitrust case before Judge  
19 Cote that involves collusive conduct by the banks.

20 THE COURT: This is the one where you were appointed  
21 lead counsel in December?

22 MR. OLSON: Yes.

23 THE COURT: Okay.

24 MR. OLSON: So, those two cases are my primary  
25 antitrust class action cases. I do a little bit of work on a



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1 case that is in the late stages and there have been, again, a  
2 number of settlements and that is called the processed eggs  
3 antitrust case. I represent a client that is named IMS health  
4 which is a major provider of data to the health care industry  
5 that was sued in a competitor antitrust case so it is a  
6 nonclass action.

7 Those are my principal cases where I focus my time.

8 THE COURT: Okay. Thank you very much.

9 And then your colleague? I'm sorry, I have a list of  
10 too many names.

11 MS. SHETH: No problem, your Honor. Manisha Sheth.

12 I presently work on, from the FHFA cases, the FHFA v.  
13 Merrill Lynch case, also FHFA v. Goldman action, and the FHFA  
14 v. Barclays action.

15 In addition, of my three other significant matters is  
16 a matter where we represent Novartis Pharmaceutical Corporation  
17 pending before Judge McMahon in this court.

18 THE COURT: Thank you very much.

19 Mr. Brockett, have you conducted a conflicts check? I  
20 certainly remember one of the banes of being in a big firm the  
21 number of conflicts you encounter. Is the firm free of both  
22 issue and client conflicts.

23 MR. BROCKETT: Yes, your Honor; with respect to the  
24 defendant banks we represent. We have and do represent Morgan  
25 Stanley from time to time, however Morgan Stanley is a 2

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1 percent market share here. There is no indication from the  
2 public that Morgan Stanley was involved in this and so they're  
3 not a defendant in our case and they're not a defendant on many  
4 of the other complaints as well. They are a defendant on some  
5 of the cases here but I tell the Court this same issue came up  
6 in CDS and Judge Cote dealt with it by saying, listen, there is  
7 going to be multiple lead counsel. If there is a conflict, if  
8 facts come to light in this case that Morgan Stanley should be  
9 sued, then we obviously will do it but we will have one of our  
10 co-counsel carve that piece of the case out, will handle it  
11 against Morgan Stanley, and we will not be adverse to Morgan  
12 Stanley in our prosecution of the case against the other  
13 defendants.

14 Judge Cote said she had no problem with that and we  
15 are proceeding in the CDS case under that very procedure.

16 THE COURT: Okay.

17 So, just a couple of other questions. One is how  
18 would you normally deal with document review? Do you have your  
19 own associates do all of the review soup to nuts? Or do you  
20 use contract lawyers? Or do you have a special category of  
21 lawyers? How do you deal with that?

22 MR. BROCKETT: Sure. We use contract lawyers for big  
23 document productions because it is efficient and less costly.  
24 We have a whole roster of contract lawyers that work for Quinn  
25 Emanuel. In addition to that, we have teams of associates in

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1 the firm. I don't have any assigned team of associates for my  
2 cases. It is whoever is available. And, frankly, we work  
3 associates in multiple offices seamlessly. We consider  
4 ourselves one firm and if I need an associate and can't staff  
5 it in New York, we can go to San Francisco or go to Washington,  
6 D.C. And we think that's the best system. But, we obviously  
7 would have a team of associates, regular associates in addition  
8 to the partners, staffed on this particular case.

9 THE COURT: Okay.

10 And then one final firm and that is -- I mean Quinn is  
11 quite a substantial firm all alone. Why these three other very  
12 able and, in the case of Robbins, quite a large firm to have as  
13 part of your proposed team?

14 MR. BROCKETT: Fair question.

15 There are three reasons, your Honor, but first of all  
16 let me say these are all excellent, excellent firms with a lot  
17 of expertise in the particular issues here that they are  
18 bringing to the table.

19 THE COURT: You don't have to persuade me of that. I  
20 can see that by their qualifications and credentials.

21 MR. BROCKETT: There are three reasons why and we had  
22 discussions about what structure would be the best for the  
23 class in this case. We talked to all of the firms and put a  
24 lot of effort and time into trying to come up with what is the  
25 best structure for the class in this case but why we have gone

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1 with the four lead in the case is for several reasons. First  
2 of all, this case demands substantial resources.

3 The Foreign Exchange is the largest financial market  
4 in the world with trillions of dollars of commerce transactions  
5 every day. This conspiracy involves multiple continents and  
6 there is definitely going to be discovery needed from Europe.  
7 There are multiple investigations around the globe by  
8 investigators in various countries but most importantly, Judge,  
9 we are going up here against the world's largest banks. These  
10 are very sophisticated financial institutions that are  
11 represented all by major New York Law firms. They are going to  
12 have armies of lawyers and we, on the plaintiff's side, need  
13 the resources to go toe-to-toe with the resources that the  
14 banks are going to put against us toe-to-toe on substance and  
15 that is why we have determined, in this case, a four-firm  
16 structure can operate sufficiently and is the best proposal.

17 Also, the depth of the experience that we would have  
18 here among my proposed co-counsel is Doug Richards who is  
19 former Deputy General Counsel of the CFTC -- the Commodities  
20 Futures Trading Commission. We also have Greg Asciolla who is  
21 a former trial attorney from the DOJ antitrust division. And  
22 we have from Cohen Milstein we have a firm that is a brand name  
23 in this industry and who has won the largest antitrust verdict  
24 ever in the history of the western world.

25 So, that's basically it. It is the experience, it is

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1 the resources that we need and it is the expertise, the  
2 expertise that these four firms can bring to this case --  
3 expertise in antitrust, expertise in commodities and expertise  
4 in class action litigation, and we think that its necessary in  
5 this case largely because of the resources that we are going to  
6 be faced with by the other side and the Court should make sure  
7 that there are ample resources on both sides of the v.

8 THE COURT: Thank you very much.

9 Now I would like to hear from Mr. Briganti. My basic  
10 question is: Why your firm? And you don't have to tell me  
11 what a wonderful firm it is and what an illustrious practice  
12 you have or even about your great experience in these types of  
13 cases because I have read about that, I think those are real  
14 strengths. But, why your firm versus these other firms or  
15 versus someone like Quinn and the other firms at the front  
16 table who have many larger resources?

17 MR. BRIGANTI: Well, we have a different viewpoint,  
18 Judge, number one. We will bridge a different viewpoint to the  
19 viewpoint that these four firms bring. We don't come to court  
20 and tell judges that we're the biggest but we, I can say with  
21 all credibility and conviction, we are the best plaintiffs'  
22 side firm in financial benchmark litigation as evident in the  
23 most highly researched, best expert vetted complaint on file.  
24 We didn't discover financial benchmark litigation yesterday, we  
25 have been doing it since 2003. We pioneered it.

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1 In the In Re: Natural Gas case before Judge Marrero,  
2 who appointed us co-lead counsel, we litigated that case  
3 against 20 of the largest natural gas companies in North  
4 America.

5 THE COURT: Who was your co-counsel in that?

6 MR. BRIGANTI: In that there was three other  
7 co-counsel; Lovell Stewart, Labaton & Sucharow and Finkelstein  
8 Thompson.

9 THE COURT: Thanks. Go ahead.

10 MR. BRIGANTI: We worked cooperatively with many of  
11 the competing applicants here, your Honor, but we feel like we  
12 have a niche. We have an independent thinking view of how  
13 these cases should be litigated and we think that is best set  
14 forth in the complaint that we filed and the fact that we have  
15 access to specialized resources.

16 The economist we hired in this case, your Honor, she  
17 has been credited with breaking the LIBOR scandal. She has  
18 been asked by global regulators to reform LIBOR. She has been  
19 asked to draft the rules and regulations that would govern all  
20 financial benchmarks world wide. She was courted by virtually  
21 every firm in this courtroom but because of our long standing  
22 relationship she has agreed to be retained by us. We have  
23 retained her, we work hand in hand with her. We are just not  
24 lawyers but are deeply engrained in the economics.

25 THE COURT: So, let me ask you this. When you get

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1 your 1 terabyte of documents, what do you do with that?

2 MR. BRIGANTI: We recently handled, as sole lead  
3 counsel, a 14 million production of documents. We do like any  
4 other plaintiffs firms have done and have done for the last 40  
5 years, your Honor, we look, we bring in other plaintiffs  
6 counsel, we supervise the document review, we make sure it is  
7 done efficiently and make sure it is done in non-duplicative  
8 way.

9 THE COURT: But who does it?

10 MR. BRIGANTI: We have moved over to contract lawyers,  
11 Judge, just like every other law firm. But, it is important  
12 when you deal with contract lawyers, and I think we act under  
13 the guidance of the Court, to have the Court involved in the  
14 contract lawyers from day one so there is no confusion about  
15 the amount of money that could be billed out for those contract  
16 lawyers. These are very, very important issues, Judge.

17 THE COURT: Because, obviously, one of the benefits of  
18 appointing a firm like yours as lead counsel is that it is one  
19 single firm, it would oversee everything alone, you could bring  
20 in other people as needed, but it might have efficiencies when  
21 we face fee applications that, say, having four very  
22 illustrious firms at the front table would bring.

23 On the other hand, the tension is I need to satisfy  
24 myself that the work would be done in the way that best serves  
25 the class. So, it sounds like what you are saying is on an

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1 as-needed basis you, like every other firm, plaintiff's side or  
2 defense side, would turn to contract lawyers and they would be  
3 supervised by your lawyers.

4 Is that right?

5 MR. BRIGANTI: Yes, your Honor. And not just contract  
6 lawyers, we would welcome the other plaintiffs lawyers in this  
7 courtroom, Judge. We have done it. That's the way we have  
8 operated on the plaintiffs' side.

9 THE COURT: And let me ask this. What about your own  
10 personal commitments?

11 MR. BRIGANTI: Yes, your Honor.

12 My personal commitments, right now I am primarily  
13 responsible for a case before Judge Daniels involving a  
14 manipulation of the interbank rate for the Japanese yen. I  
15 have worked that case with a team at my firm that includes  
16 Ms. Hart who is chair of the New York State Bar Association  
17 Antitrust Committee, that includes my partner Peter  
18 St. Phillip, my partner Geoff Horn, and we have a team of  
19 associates that helps us out.

20 That is my primary responsibility. We have just  
21 briefed 13 motions to dismiss, your Honor, fully briefed; we  
22 are arguing it, Judge, March 5th, before Judge Daniels.

23 We have also filed --

24 THE COURT: How did you staff the briefing?

25 MR. BRIGANTI: I did the briefing with my partners



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1 Peter St. Phillip and Geoff Horn and two associates.

2 THE COURT: Okay. With regard to depositions  
3 overseas, how would you deal with that?

4 MR. BRIGANTI: Judge, that is a good question.

5 We have done it in other cases. My firm, co-lead  
6 counsel in the Sumitomo Copper Case which dealt with overseas  
7 depositions, we worked overseas with barristers there and  
8 handled it just like any other deposition, your Honor.

9 THE COURT: Thank you.

10 So, Mr. Tabacco, thank you for waiting patiently and  
11 quietly on the phone. I would like to hear from you about why  
12 you think your firm is most able to represent this putative  
13 class.

14 MR. TABACCO: Thank you, your Honor, and thank you for  
15 accommodating me and I apologize I am not there in person.  
16 This is one of the first telephone conferences that I am forced  
17 to do as it is.

18 I have almost 40 years experience in antitrust  
19 prosecutions. I started with the DOJ. I spent several years  
20 on the U.S. v. I.B.M. trial in the Southern District of New  
21 York and my career really has taken a path of representing from  
22 the Justice Department plaintiff's litigation and antitrust  
23 cases and securities cases for, as I said, almost 40 years. We  
24 think we bring a couple of unique perspectives to this case.  
25 In addition to that experience our compliance, Fresno County

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1 Employees Retirement Association is one of the larger  
2 plaintiffs in the case and they have a very substantial  
3 exposure to international and foreign trading and we think that  
4 that would heighten the ability of the potential lead plaintiff  
5 to very carefully supervise the litigation as Fresno has done  
6 when we represented them and as others have represented them in  
7 other litigations.

8 Our firm, as I mentioned in our letter, we have a  
9 large office in Boston and I run the San Francisco office. We  
10 have approximately 40 lawyers between --

11 THE COURT: That was something I wanted to confirm. I  
12 noticed you do not have a New York office; is that right?

13 MR. TABACCO: That's correct. I have been a member of  
14 the bar back there since the late '70s but we do not have a New  
15 York office; that is correct.

16 THE COURT: Okay.

17 MR. TABACCO: And, again, I think perhaps echoing what  
18 Mr. Briganti said, in the cases that we have done -- and there  
19 have been dozens over the years -- we do actively work with  
20 other law firms. So, I think one of the efficiencies that we  
21 would bring rather than a four-firm structure would be to have  
22 a firm at the top that could very easily manage this litigation  
23 and then bring in resources in addition to the resources that  
24 we have to bring the best talent to the field. Obviously it  
25 goes without saying that my colleagues who are there in the

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1 courtroom are certainly among the most experienced and the best  
2 and it is pretty hard to distinguish one from the other as you  
3 look around the room, but we think we would bring a unique  
4 perspective to that.

5 I think, again, as Mr. Briganti said, the ability to  
6 dig into these types of cases and my own personal experience, I  
7 am at a good point in terms of my time commitments. I just  
8 concluded a large case before Judge Cote involving the GE  
9 Securities litigation. We are in the process of finalizing,  
10 finishing up a very substantial case before Judge Kaplan in the  
11 IndyMac Securities litigation a mortgage-backed securities  
12 case. And the only other major commitment that I have is one  
13 of three lead counsel in the lithium batteries price fix case  
14 which is similar to this case in the sense it involves large  
15 international companies mostly in Korea and Japan.

16 So, again, those cases are at a point where I believe  
17 that I can satisfy day-to-day management and devoting the  
18 resources that obviously your Honor would expect.

19 Mr. Seaver, who is mentioned in the letter, has a  
20 great deal of experience and would act, really, as a litigation  
21 lieutenant and, likewise, given his calendar, has the ability  
22 to dedicate resources to this case. We would then call on one  
23 or two of my Boston partners to become actively involved. What  
24 we would envision is a management team of three to four  
25 partners.

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1           In contrast a bit to what you heard this morning, in  
2 situations were we have major document reviews we have taken a  
3 different approach with respect to handling those and what we  
4 have done and the Bear Stearns case is a very good  
5 illustration, we worked that case successfully with the Labaton  
6 firm; we actually bring in special project attorneys and  
7 they're actually part of a firm that is hired for a particular  
8 project. Often times it is a year to a year and a half  
9 employment. They're on the website, they're part of the  
10 organization, they're on our payroll. So, really, we feel that  
11 that gives us a much better ability to manage their time and  
12 their efficiency and to provide them benefits rather than  
13 simply going out and hiring contract lawyers.

14           In addition, as Mr. Briganti said, and I think  
15 obviously Mr. Brockett would agree, that in the case of this  
16 size we are going to need resources of a lot of the people in  
17 this room and, again, because you have efficiency at the top  
18 you can manage those resources, we think, by calling on the  
19 firms that we know will do the job and do it efficiently and  
20 can, at the end of the day, provide it the results we would  
21 hope and expect would be a successful result when it comes time  
22 to what compensation should be granted. We think that when you  
23 have efficient management that the class benefits because the  
24 overall amount of time and energy that is expended in a  
25 litigation is managed to manageable --

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1 THE COURT: I'm going to interrupt you because I  
2 understand your point and I appreciate it. It sounds like no  
3 matter who is appointed here it will be necessary for people to  
4 work with other firms and to manage other lawyers.

5 So, I'm going to turn to Mr. Burke now from Scott &  
6 Scott and it is the same question and set of questions but the  
7 first one is why are you and your firm best suited to act as  
8 lead counsel in this case?

9 MR. BURKE: First, thank you for the opportunity to  
10 present today.

11 Why Scott & Scott and Hausfeld?

12 THE COURT: Yes.

13 MR. BURKE: The simple matter is what my firm  
14 specializes in, and me in particular, is financial services  
15 litigation. Mr. Hausfeld's firm does nothing but prosecute  
16 cartel cases. That's what they do. Between the two firms we  
17 have three dozen lawyers. Three dozen lawyers who are devoted  
18 to doing nothing but prosecuting plaintiff's antitrust class  
19 actions. That's a lot of capacity not just here but in Europe.  
20 And, the Hausfeld firm has an additional Hausfeld firm in  
21 Europe. Neither of our firms are being burdened with either  
22 side of the v, there is no issue. We are going in one  
23 direction.

24 Our offices, you have a question about that, are in  
25 San Diego, New York and Connecticut.

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1 THE COURT: Connecticut is close enough.

2 MR. BURKE: I'm bi-coastal; I have a place in Chelsea  
3 as well as in San Diego. It is not an issue for me to be here  
4 and deal with matters in the case.

5 As a practical matter I know your Honor is not placing  
6 a great deal of importance on it, but from my client's  
7 perspective it was important that they went first. There was  
8 no guarantee anybody else was going to jump into the water.  
9 When we filed that complaint there was no model to follow. We  
10 took the closed-book exam so to speak, okay? And before we got  
11 there we consulted with experts, I sent my team to foreign  
12 exchange trading school. I really sent a team to get educated.  
13 We spent nearly \$100,000 working the case up before we filed  
14 it, out-of-pocket costs. We take this very seriously.

15 It is an area, financial services litigation, where I  
16 personally have a great deal of experience. In terms of my  
17 dance card what I am doing right now is the private equity  
18 antitrust litigation in the District of Massachusetts in front  
19 of Judge Young where I am co-lead with Mr. Coughlin and as well  
20 as the Robbins Kaplan firm up in Minneapolis. Discovery is  
21 closed there and we are in class certification and we have a  
22 trial date in November. I have another case that just started,  
23 the aluminum case. Other than that, I manage our competition  
24 practice. So, I'm available to run this case.

25 THE COURT: Okay. Thank you.

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1           So, let's assume that there would be over 100  
2       depositions. How would that be staffed?

3           MR. BURKE: Well, you staff it with the lawyers who --  
4       you have to coach your lawyers up so they understand the  
5       industry and the practice and we do this every single time; if  
6       it is a payment cards case you have to know payment cards  
7       better than Visa and MasterCard. In Foreign Exchange we are  
8       going to know Foreign Exchange better than the dealer banks do.  
9       And, you break it up with the lawyers you are dealing with. If  
10      it is my firm and Mr. Hausfeld's firm we would staff up 100  
11      depositions; we can deal with that. If we would bring in other  
12      firms because I do tend to work collegially, for instance, in  
13      the private equity antitrust case it is my firm, Mr. Coughlin's  
14      firm, Mr. Wildfang's firm, we do bring other firms in because  
15      you have lawyers who have skills and if you have lawyers who  
16      are particularly good at taking depositions, you use them.

17           THE COURT: So, how exactly does that work? If you  
18      decide to use other firms and they're not appointed as co-lead  
19      counsel, how do you do that in terms of anticipating fee  
20      applications?

21           MR. BURKE: Right.

22           In virtually every case I have been involved in --  
23      plaintiff's antitrust class actions -- more than just lead  
24      counsel work on the case. In the Interchange case where I was  
25      lead counsel with Mr. Coughlin before I left and went to Scott

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1 & Scott, there were three leads and there were a dozen firms in  
2 the executive committee. When I left and went to Scott & Scott  
3 I took the depositions of the CEO of MasterCard, the COO of  
4 MasterCard and the CFO of MasterCard. I wasn't lead counsel.

5 What we did is we had a meeting, decided here are your  
6 seniors with the capabilities to get the best evidence from the  
7 class. We give people an assignment, you manage that  
8 assignment and when they're done, they're done.

9 THE COURT: Okay. Thank you.

10 So, I think what we will do now is take a brief  
11 recess. We have been sitting here for a long time, I'm going  
12 to look at my notes and figure out how to proceed and  
13 hopefully, when I come back, I will make a decision and we can  
14 go.

15 MR. HAUSFELD: Your Honor, if I may?

16 THE COURT: Yes.

17 MR. HAUSFELD: Mr. Hausfeld.

18 THE COURT: Yes.

19 MR. HAUSFELD: You asked at the beginning of this  
20 morning's session what other factors not necessarily evident  
21 from resumes might be influential in your opinion.

22 THE COURT: Yes.

23 MR. HAUSFELD: I would like to address that element,  
24 if I might?

25 THE COURT: You may very briefly but I don't want to



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1 open the door to everyone in the room addressing additional  
2 factors. But, go ahead. You were first.

3 MR. HAUSFELD: Thank you, your Honor.

4 As was stated this morning, this is a worldwide  
5 offense. This is going to need discovery and understanding of  
6 laws in other jurisdictions and coordination with those  
7 jurisdictions. Discovery is not going to be that necessarily  
8 simple as filing a request and/or a deposition notice. There  
9 are going to be public agencies that are going to want to  
10 protect their ongoing investigations, someone is going to need  
11 to work with those agencies to be able to coordinate their  
12 investigations with the discovery requests in order to sequence  
13 them. You are going to need counsel who know foreign laws,  
14 particularly private enforcement which, in all humility, your  
15 Honor, we have pioneered international competition violations.  
16 The laws outside the United States with respect to that and  
17 follow-on litigations has been principally made by us. We have  
18 led the reformation of the UK private enforcement as well as  
19 the EU guidelines as well as having access and influence in the  
20 Asian private enforcement.

21 So, there are more factors involved in pulling  
22 together a global case such as this which involves a worldwide  
23 benchmark which will require knowledge of the substantive laws  
24 and the knowledge of the violations, not only knowledge of the  
25 institutions as in particular in this instance given the fact

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1 that our London office has now been retained in a LIBOR action  
2 of the same types of offense business, the same institutions.

3 Those are all factors which I think will facilitate in  
4 the lead structure.

5 THE COURT: Okay. Thank you very much.

6 We will be recessed for 10 minutes.

7 (Recess)

8 THE COURT: I have had a chance to look at my notes  
9 from the prior research I had done as well as from hearing from  
10 all of you, and I also just want to make very clear that  
11 although I did not hear from Cohen Milstein, Robbins Geller or  
12 Labaton I did spend a fair amount of time yesterday doing  
13 research about your firms. Even though I didn't hear from you  
14 I know that they are very fine firms and I want to say that I  
15 think you all know I am relatively new to the bench, I'm about  
16 to celebrate my one-year anniversary, and I have been uniformly  
17 impressed with the roster of lawyers that have been presented  
18 to me in this case. So, thank you all very much.

19 My ruling is that I'm going to appoint Scott & Scott  
20 as interim lead counsel to represent the U.S. putative class.  
21 I understand that Scott & Scott's proposal is to serve with  
22 Hausfeld but I have also seen sort of shifting alliances among  
23 the group and so what I would like is for Mr. Burke to give me,  
24 in the next couple of weeks, a letter with a proposal for how  
25 you would structure the leadership of the representation of the

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1 class of course including Mr. Hausfeld, if that seems most  
2 appropriate to you which I assume it will.

3 Let me give my reasoning:

4 The rule actually isn't so helpful in this case  
5 because, as I said, the work counsel has done I think is  
6 important, but this early in the case doesn't really carry that  
7 much weight. In terms of counsel's experience, every counsel  
8 at the table sitting here is very highly qualified and I don't  
9 think splitting hairs about the experience of counsel is really  
10 a way to decide, or knowledge of applicable law.

11 Resources, of course, is another issue under Rule  
12 23(g)(1), but the tension between resources is also the issue  
13 of efficiency and obviously the folks at the front table bring  
14 tremendous resources but just counting the number of lawyers it  
15 is about 1,000 lawyers out of the box that is being proposed as  
16 lead counsel if you just look at the firms as a whole. My  
17 concern is not just, as I said resources, but also efficiency.  
18 Another aspect of resources, of course, is real availability of  
19 the key people and perhaps because Quinn happens to be so  
20 successful at this business I can see, simply from talking to  
21 the lawyers, that you are all very engaged in very important  
22 and exciting and time-consuming work, as are other lawyers in  
23 the courtroom -- but, I think especially so for the Quinn  
24 lawyers. And so, I think that having a smaller firm that can  
25 draw on other firms as-needed will serve the class best in this

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1 case. I believe that having a firm like Hausfeld with the  
2 resources overseas in a case that will involve a lot of  
3 discovery coming out of London will be very helpful. And I  
4 also believe that things like document productions will be done  
5 apparently the way everybody does them these days is by hiring  
6 people to do them in the first instance and that the  
7 depositions will be handled primarily by the senior lawyers at  
8 the lead counsel firms but perhaps by others as well.

9 So, Mr. Burke, if you could keep in mind my concerns  
10 about efficiency in your proposal to me I would appreciate  
11 that, but I will look forward to receiving that.

12 So now I think we are nearing the end of our  
13 conference. Let me quickly deal with the other issues that are  
14 on my agenda.

15 I don't think it is necessary to appoint interim lead  
16 counsel for a Korean putative class. There is only one case at  
17 this point and it is completely discretionary and I think  
18 particularly useful where you have multiple cases which we  
19 don't have in this case. So, Kim & Bae represents the  
20 plaintiffs in that case and I assume they will continue to do  
21 that.

22 Are there Kim & Bae lawyers here?

23 MR. RUE: Yes, your Honor.

24 THE COURT: So I can meet you and say hello.

25 MR. RUE: Good morning, your Honor.

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1 THE COURT: Good afternoon.

2 MR. RUE: Good afternoon.

3 THE COURT: I would like a sense, if you can,  
4 Mr. Burke, of timing for a filing of a consolidated complaint.

5 MR. BURKE: Your Honor, we would like 45 days from  
6 today.

7 THE COURT: Thank you.

8 MR. BURKE: Thank you.

9 THE COURT: So, that gives us until around the end of  
10 March. We will put it in a written order so there is a fixed  
11 date.

12 MR. BURKE: Yes, your Honor.

13 THE COURT: Okay.

14 The next issue to talk about is the March 3rd  
15 conference. We can go forward with it on March 3rd. The  
16 issues that I intend to deal with are the motion schedule. I  
17 presume there is likely to be a motion to dismiss. I want to  
18 put on the record I will put it in a written order that any  
19 deadlines that are still out there for answers to be filed by  
20 any of the defendants, I am going to vacate any orders that are  
21 in place and suspend application of the rules for the filing of  
22 answers or motions to dismiss until the consolidated complaint  
23 is filed. And then we will set up a schedule once we have that  
24 in place.

25 I would also discuss at the March 3rd conference the

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1 discovery schedule as well as any applications to stay  
2 discovery. So, the question is the March 3rd date has the  
3 benefit of being on everyone's calendar already. We won't have  
4 a consolidated complaint by then but I think we probably still  
5 could come up with a motion schedule and consider the issue of  
6 a discovery stay or a discovery schedule. The other  
7 alternative, though, is whether we want to postpone that  
8 conference, just try to find a new date when everybody can show  
9 up once the consolidated complaint has been filed. It would  
10 mean pushing it off for about a month.

11 So, let me hear from Mr. Burke first and then I will  
12 figure out who else to hear from on that.

13 MR. BURKE: Your Honor, it is our preference to keep  
14 the March 3rd date. The discovery issue whether to stay  
15 discovery or go forward has been pending for some time as far  
16 back as the Rule 16 conference in front of Judge Berman. There  
17 has been letter briefing on that and we would like that  
18 resolved sooner rather than later. It also gives us a chance  
19 in the meantime to discuss with the defendants a mutually  
20 agreeable briefing schedule. Hopefully it is something we  
21 could present to the Court on March 3rd.

22 THE COURT: That would be efficient and desirable.  
23 Thank you.

24 So, I have many defense firms here. What I am going  
25 to do is arbitrarily pick the one that is listed first on the

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1 letter I have, it is Sullivan & Cromwell. Is there someone  
2 from Sullivan here?

3 MS. QUINN: Yes, your Honor; Yvonne Quinn with  
4 Sullivan & Cromwell.

5 THE COURT: I know that you are not an official  
6 spokesperson of any kind for the defense group but let me just  
7 ask, do you have any thoughts about whether to proceed on March  
8 3rd? I see a lot of benefits to it, one being it is on  
9 everybody's calendar. But, go ahead.

10 MS. QUINN: I think that I didn't have time to consult  
11 with my colleagues in the last five minutes so I am a very  
12 unofficial spokesman, your Honor.

13 I am sure that the defendants would be willing to  
14 accommodate the Court with either the March 3rd date or later  
15 date. The advantage, of course, in talking about issues such  
16 as discovery, is we would have the consolidated complaint, if  
17 we did just simply defer the date until a few days after the  
18 consolidated complaint is available. But, I am sure we would  
19 accommodate either way.

20 THE COURT: Thank you.

21 My suspicion, in any event, is that the view of many  
22 on the defense side is that discovery should be stayed  
23 regardless of what the complaint says, assuming that it has  
24 some similarity to the ones that have been filed already. So,  
25 thank you very much. What we will do is I am going to keep the

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1 March 3rd date and we will take up at that time the schedule  
2 for motions and what to do about discovery.

3 There are just a few housekeeping matters left. I am  
4 going to remove the complex case designation from all of these  
5 cases. I will vacate any existing scheduling or case  
6 management orders. I would love a volunteer from defense  
7 counsel to serve as the liaison, meaning if there is some  
8 message we need to get to everyone to have an e-mail list so  
9 you can e-mail everyone and get the message to everyone. It is  
10 not for any substantive purpose at all, it is simply to have a  
11 number for my chambers to call if we need to reach out to you  
12 as a group.

13 MS. QUINN: Ms. Quinn, your Honor, unofficial  
14 spokesman.

15 Can we get back to you as soon as we consult on that?

16 THE COURT: That's fine. And if you would just send a  
17 letter to my chambers and copy Mr. Burke? He will figure out  
18 how to get it to the relevant people on his side from there.

19 MS. QUINN: Thank you. We will do so, your Honor.

20 THE COURT: Thank you.

21 Is there anything else that anyone wants or needs to  
22 discuss today?

23 Okay. Thank you. We are adjourned until March 3rd.

24 o0o